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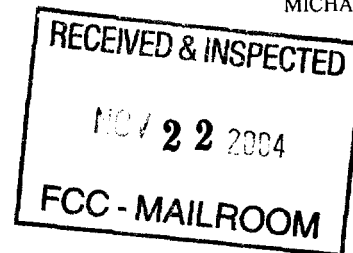
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November 12, 2004

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554



**Re: Proposed Pre-Emption of New Jersey  
Do Not Call Law/Docket No. CG 02-278**

Honorable Commission:

I am writing this letter as counsel for National Recreational Properties, Inc. and its affiliates ("NRP"). NRP does a substantial amount of real estate business in the State of New Jersey. NRP has relationships with many New Jersey residents who purchase real estate from NRP, many on credit, and must communicate with them, sometimes long after eighteen (18) months from the date of the customer's last credit transaction, particularly if they are in default of their promissory note. NRP does not merely foreclose upon their interests but attempts to work with them to get them back to a good credit position. New Jersey law would work a hardship on this relationship and be to the detriment of the New Jersey resident if he happens to be on the Do Not Call list.

The New Jersey rules regarding exemptions related to "continuing services," "established customers," and "existing customers" create a more burdensome set of rules than set forth by Federal law. For example, if a seller of real estate takes back a mortgage and then collaterally assigns it to a lender, the lender may have difficulty in contacting the person by telephone in the event there has been a default in payments because "Existing customer" refers to contacts made with the seller and not with the seller's assignee. This would create a major impediment toward the financing of real estate transactions and most likely would jeopardize the financing of various items of personal property as well. This issue is peculiar to New Jersey and is not required by Federal law.

Further on this issue, if a telemarketer receives an inbound call from a prospective purchaser or a person wishing to sell his real estate to NRP, can the telemarketer return the call if the person initiating the communication is on the Do Not Call list? Apparently, under New Jersey rules, the recipient of the initial call cannot make the return call to a New Jersey resident on the Do Not Call list without receiving an express written request from the customer called. All other calls would be a "Unsolicited Telemarketing Sales Call". The expense to the New Jersey resident as well as the telemarketer, and I am using this term since it is so broadly defined in the New Jersey regulations, would have to respond to the initial telephone call from the New Jersey resident, request from them a written authorization so that they would be allowed to return the call. This is a major impediment to normal commerce between two parties who are not making an unsolicited telemarketing sales call in the customary way that the statement is used, but would fall under that definition in New Jersey law. **We respectfully state that Federal pre-emption would allow a response made to a telephone call from a person on the Do Not Call list.**

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New Jersey does not use the definitions set forth in the Federal law. The current Federal "Established Business Relationship" exemption to the national Do Not Call registry is fair and balanced (definition below), and should pre-empt the rules followed by the New Jersey Division of Consumer Affairs.

The term "established business relationship" means a relationship between a seller and a consumer based on: (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or (2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

Specifically, the New Jersey legislation defines a "telemarketing sales call" as a telephone call to encourage the purchase or rental of, or investment in, merchandise, except for continuing services. Debt collection calls are specifically exempted. An "unsolicited telemarketing sales call" means any telemarketing sales call other than a call made: (1) in response to an express written request of the customer called; or (2) to an existing customer, which shall include debt collection calls.

Importantly, the terms "continuing services" and "existing customer" are left undefined in the New Jersey legislation.

The New Jersey rules regarding existing customers are more restrictive than the equivalent federal rules and would only apply to calls that originate and terminate in the State of New Jersey ("intrastate" calls). As applied to "interstate" calls, the Federal Communications Commission has already concluded that such rules would "almost certainly" be pre-empted and this should be consolidated by Federal pre-emption.

**New Jersey has already realized the benefit of utilizing the National Do Not Call Registry as their State Do Not Call list. It therefore makes economic sense to follow Federal regulations for calls to existing/established customers.**

The registration fees charged by New Jersey should be eliminated in recognition of New Jersey's use of the Federal registry.

The fees as charged by New Jersey are imposed independent of the state's use of the Federal Do Not Call registry. By making use of the National Registry, however, "the Division is saving money for the taxpayers of the State of New Jersey as the Federal Trade Commission is bearing the cost of establishing and maintaining the registry. **Why can't these cost savings be eliminated to benefit the companies that are paying the fees for the National Do Not Call List?**

The proposed regulations state that "No telemarketer shall make or cause to be made any unsolicited telemarketing sales calls to a customer ... [w]hose telephone number has been identified as belonging to a commercial mobile service device." This language applies to ALL calls, independent of source.

The equivalent federal rule (under the regulations issued by the FCC pursuant to the Telephone Consumer Protection Act) requires only that "automatic telephone dialing systems" (Which includes predictive dialers) must avoid calls to mobile devices.

**New Jersey should be governed only by the federal rules on this issue; requiring otherwise has a significant disparate impact on small businesses that do not use predictive dialers.**

The New Jersey regulations require that telemarketers disclose all of the following information: (1) the name of the person making the call; (2) the name of the telemarketing entity making the call; (3) the name of the person or entity on whose behalf the call is being made; and (4) the purpose of the call. The requirement that the telemarketer disclose "the name of the entity making the call" in addition to the name of the person on whose behalf the call is being made imposes an additional burden on telemarketing service bureaus not being imposed on entities making the calls on their own behalf. This additional burden would have a negative competitive impact on those entities using service bureaus as opposed to those entities that do not (as well as a negative competitive impact on the service bureaus themselves).

By making service bureaus disclose this information, should a consumer make an "in-house" Do Not Call request, this request would therefore apply not only to the entity on whose behalf the call is being made, but also the service bureau itself. After this request is made, the service bureau would be unable to contact this person on behalf of any of its customers, even though the consumer most likely only intended to stop calls from the party on whose behalf the service bureau made the call.

This additional disclosure requirement does not exist at the federal level, nor does any state (other than Massachusetts) require it. Pre-emption would correct this problem.

The New Jersey rules require only that "a telemarketer making a telemarketing sales call shall, within the first 30 seconds of the call, identify the telemarketer's name, the person on whose behalf the call is being made, and the purpose of the call. There is no requirement that the name of the entity making the call be disclosed.

**The Federal Communications Commission pre-emption would remove the requirement that the name of the entity making the call be disclosed.**

It would be appreciated if our comments would be considered and acted upon by the Federal Communications Commission. The New Jersey regulation of telemarketing imposes an unduly harsh burden on NRP. They must comply with the very extensive regulations of the Federal Trade Commission and the Federal Communications Commission and believe that the State of New Jersey could protect its citizens by following Federal guidelines which would avoid unnecessary costs to the industry and eventually to the consumer as costs are passed down through increases in sales prices necessitated by a burdensome regulation.

Thank you for your consideration.

Very truly yours,

FIELDSTONE LESTER SHEAR & DENBERG, LLP

By: \_\_\_\_\_

Robert E. Dady, Of Counsel